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Hon C. C. Washburn

MEMORIAL

TO THE

Senators and Representatives

OF THE

FORTY-FIRST CONGRESS.

Memorial from the Commissioners elected by the Reconstruction Convention of the

STATE OF TEXAS,

"To Represent the Condition of the State and the Wants of the loyal people."

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MEMORIAL.

WASHINGTON, D. C., *March* 11, 1869.

To the Senate and House of Representatives of the United States.

Your memorialists were, by the Reconstruction Convention of the State of Texas, elected "Commissioners to represent to the Congress of the United States, the condition of the State and the wants of her loyal people." In accordance with the resolutions of said Convention, adopted January 20, 1869, imposing this duty upon us, we beg most respectfully to submit herewith the following statements respecting the condition of Texas, and the remedy which it is considered necessary to apply in order that our State may be reconstructed upon a permanently loyal basis.

THE SITUATION.

It is a fact, that the condition of public society in Texas has been, and is still, very desperate. A report of a special committee of the Convention, on "Lawlessness and Violence" in Texas, of June 30th, last, gives the following statistics of homicides:

	Whites.	Freedmen.	Total.
Killed in 1865	39	38	77
" " 1866	70	72	142
" " 1867	166	165	331
" " 1868	171	133	304
Year unknown	24	21	45
Unknown race			40
Total	470	429	939

These statistics are drawn from the records of the Texas State Department, particularly from the official reports of the clerks of the district courts of forty counties; from the records of the office of the Freedmen's Bureau of about sixty counties, and from sworn statements of competent witnesses. This latter source of information is, however, very incomplete, as the danger incurred by persons testifying to cases which had come to their knowledge, made them unwilling to respond to a call of the committee. These official statements show that 464 whites and 373 freedmen, together 833, were killed by whites; 10 whites and 48 freedmen, together 58, by freedmen, and 48 persons by parties whose race was unknown. How many persons were killed,

of whose assassination no record exists, is a question which cannot be answered, even approximately. Many persons have mysteriously disappeared, particularly individuals of the colored race, so that the general belief prevails that the above statistics do not cover one-half, perhaps not one-quarter, of the crimes committed during the periods mentioned.

In examining the given figures, it will be seen that after the close of the rebellion the number of assassinations has steadily increased, reaching during the five months, from January to June, 1868, the frightful number of 304 cases, officially reported.

It has been the system of the rebel press to deny the truthfulness of these facts. This system is still persevered in, and for obvious reasons a number of men, who, though they claim to be Republicans, now act with the rebels of Texas in pretending that, since the election of General U. S. Grant, a marked decrease of lawlessness and crime has become manifest. *In fact the assassinations, since the election of General Grant as President, have averaged two persons daily.*

A supplement to the report from which the above statistics are taken, drawn up with the same accuracy and care, would show that the condition of public society has become worse and worse from month to month.

General J. J. Reynolds, in an official report to the adjutant general of the army, bearing date fourth December last, says:

"The civil law east of the Trinity river is almost a dead letter. In some counties the civil officers are all, or a portion of them, members of the Ku Klux Klan. In other counties the civil officers were compelled to leave their counties. In many counties where the officers have not been driven off, their influence is scarcely felt. * * * * * * *

"Lawless men in large bands attend the political meetings held under the auspices of the Democratic clubs. The speakers indicate, by name, those elected for murder. The men thus pointed out have no course left them but to leave their homes, or to be murdered on the first convenient opportunity. The murder of negroes is so common as to render it impossible to keep an accurate account of them. Free speech and free press have never existed in Texas. The official reports of lawlessness and crime, so far from being exaggerated, do not tell the whole truth. * * * * * * * * *

"Civil courts *cannot* punish outlaws. Military commissions *must* show that men can be punished in Texas for murder and kindred crimes. *This will be the work of years.*"

An official letter from Provisional Governor E. M. Pease, dated twenty-third December, 1868, corroborates the statement given by General Reynolds, and acknowledges "*that no fair elections could be held in the state,* the freedmen being debarred from voting by threats of violence."

It will be understood from these statements that the cant phrase, "we accept the situation," has not been verified in Texas.

The Cause.

There can be no doubt that the different reasons which have produced this lamentable state of affairs can be summed up in two words, "Johnson's policy." The great mass of the rebel population of Texas do not consider themselves as having been defeated in their contest with the government. State rights and state sovereignty are as firmly believed in as if no bloody arbitration had ever taken place on the battle-field.

The encouragement given to the old Confederate leaders, and to the rebel party generally, by military rulers who ordered that military rule must be subservient to civil authority, the removal of General Sheridan, the untimely death of General Griffin, the action of governors and military commanders, trammeled as they were by "my policy" measures, and the influence of rebel society, resulted in increased disorder and lawlessness.

A convention was chosen under a strict execution of the registration acts, enforced by a firm military hand, which resulted in the election, as Republicans, of seven-eighths ($\frac{7}{8}$) of the delegates, the almost entire Democratic party having declined to participate in the election. The result of the election led to the hope that the labors of the convention would be satisfactory to every true loyalist.

These anticipations were, however, not realized. A considerable number of the members, calling themselves Republicans, did not in their actions come up to that firmness for Republican principles which their constituents had a right to expect. A constitution was framed, which gives no satisfaction or security to the loyal people of either color, but which is heartily endorsed by the Democratic or rebel party, and a *very few* (so-called) Republicans.

This new constitution recognizes the validity of rebel legislation, so far as not prohibited by the Constitution and the laws of the United States, *thus putting the legislation during the rebellion*

on the same footing as that of the most loyal States. This wrongs numberless individuals, and destroys the school fund of the State by declaring the payment of Confederate money and State warrants, created for the furtherance of rebellion, a valid equivalent for gold claims against railroad corporations and purchasers of university lands.

The new constitution abolishes the wise safeguard offered by the reconstruction acts, with regard to the right of suffrage, allowing in this respect the utmost latitude to the disloyal. As a provision to secure the voting privilege and other civil and political rights to the colored citizens, against hostile measures, it was proposed to insert the following section in this constitution as a guarantee that future legislation should not abridge their rights:

"We declare that the powers herein granted to the different departments of the government of this state are based upon the equality, in civil and political rights, of all human beings within the jurisdiction of this state, and should any department (either executive, legislative or judicial) attempt in any manner to deprive any person of therein guaranteed civil and political rights, such attempts shall be considered as a violation of the compact under which the State entered the Union."

This provision was promptly stricken out, thus giving an earnest that a repetition of the Georgia proceedings may hereafter be attempted. *All provisions for the registry of voters, and the oath to support the Constitution and laws of the United States,* and in favor of equal civil and political rights for all, were stricken out. These manifestations are ominous of troubles to come, if the Democracy can get control of the State.

The new constitution will undoubtedly be accepted by the white rebel majority, the military being hardly strong enough under its present energetic commander, General Canby, to secure such peace or tranquility as may enable a fair canvass of the colored population to be made. The legislature, if elected under this constitution, will consist of ex-Confederates and so-called Republicans who act with the former. The executive and judicial departments will be filled with officers, who, though they may not be disqualified under the 14th amendment to the Constitution, are and have been, hostile to the national government, and the fate of the white and colored Unionists will be as bad as it was during the darkest days of the rebellion.

The Remedy.

The new Constitution should not, for the foregoing reasons, be submitted to the people, at such an early day, as the resolution of the convention contemplates, if it is to be submitted at all. The State will not, at that time, (1st Monday in July next,) be in a condition to enter upon so important an election. Our only hope rests with the Congress of the United States, or the commander of the army, that a postponement of any election will be ordered, until, by the strong arm of the national power, genuine peace is restored to the State, and that Congress will, in the meantime, intervene with adequate legislation to secure a remodeling of the constitution, in consonance with the necessities and spirit of the times.

In view of the difficulties under which we labor, in providing a government for our large State, the convention, at a time when but few of the seats of the delegates were vacant, (20th January last,) adopted resolutions, declaring, in effect, that the extent of our State, the diversified interests, and the lawlessness generally prevailing, rendered a division of the State necessary and proper; that, from its great size, covering an area of nearly three hundred thousand square miles, it was unwieldy, and ought to be subdivided into States of more convenient size. The great diversity of interests of the various sections; the marked dissimilarity of manners, pursuits, and habits of life of the people, distinguishing the eastern from the western portions of our State, render it impossible to produce such harmony of action, in the State government, as the welfare and prosperity of the several sections demand, and thus the main object of State government (the furnishing of local government to the people) is lost. This opinion of our Commission is endorsed by the majority of the convention, and by the people, in many public meetings. The plan of division, and the lines which find the greatest favor with the people, are a divison into three States, by the lines proposed in May, 1868, in the bill of Mr. Beaman, of Michigan, offered in the House of Representatives.

This plan takes the sea-shore of the Mexican Gulf as the basis of division, and proposes the Colorado and Trinity rivers as the dividing boundaries of the three States; and a consideration of the quality of the soil in the several sub-divisions, the present and probably future population, the capability of tax-

ation, as shown by the last assessments, the sameness of interests, and the homogeneity of the population, in the several districts, and the outlets of trade thereto, recommend this plan of division above all others.

The following table will show the area of the several sub-divisions, their population, as given in the United States census of 1860, and the State taxes, as assessed in year 1867.

	White.	Colored.	Total Population.	Area in Sq. Miles.	Taxes.
East Texas..	161,217...	78,083...	239,300...	32,813..	$107,585 72
Mid. "	...164,613...	77,835...	242,448...	63,423..	272,487 41
West "	... 94,318...	26,958...	121,276...	96,628..	133,667 47
Total.....	420,148	182,876	603,024	192,864	$513,740 60

The population, at this day, is variously estimated at from 800,000 to 1,200,000 inhabitants, which would give the least populous sub-division, Western Texas, an aggregate of 180,000 to 200,000 inhabitants.

Objections to, and advantages of, a Division of the State.

An objection, which is frequently stated, and liberally used, by the opponents of division, is the increased expense of the three state governments; but a little reflection will suggest many instances, within the United States, which go to show that small State governments are cheaper, in comparison with larger ones. The financial advantages, on the other hand, are so manifest, that even an increased taxation would be easily and cheerfully submitted to by the new States.

A more serious consideration is presented by the political consequences of a division of the State. Now, we grant, it looks almost paradoxical to assert that, while the undivided state may be carried by the old rebel element, on the other hand, a division into three sections would most likely offer the loyalists a chance to send none but loyal men to Congress, and to elect three loyal State governments. This, however, we decidedly believe will be the result. A division into three territories will give the military commanders a better chance of suppressing lawlessness; enable the loyal, especially the colored element, to make free use of their franchise, and thus secure an expression of public opinion, which, in a State of near seven hundred miles in width, and eleven hundred in length, without

railroads or telegraphs, with a hostile and reckless population to manage, is a matter of utter impossibility.

There being a marked difference in the political feelings of the population east and west of the Colorado, it is safe to assume, that the people of the western State can at once be entrusted with self government, even granting that the two eastern States should for some time remain under the immediate control of the general government. In this connection we call attention to the following memorial, signed by a large majority of the members of the Convention present:

MEMORIAL FROM THE RECONSTRUCTION CONVENTION ASKING CONGRESS FOR A DIVISION OF THE STATE.

To the Honorable Senate and House of Representatives of the United States in Congress assembled:

The undersigned Delegates to the Constitutional Convention of the State of Texas, respectfully recommend to the Congress of the United States that the people living west of the Colorado river be allowed to form a constitution and establish a State government loyal to the United States, and a large majority of the delegates in this convention from the district embraced in the same, have agreed upon a constitution, which is respectfully recommended by the undersigned, as offering all the guarantees of a republican government to the people of that territory.

HALL OF CONVENTION, AUSTIN, TEXAS,
January 24th, 1869.

Signed:

EDMUND J. DAVIS, delegate from 62d district.
JAMES P. NEWCOMB, delegate from Bexar and other Counties.
ANDREW DOWNING, delegate from Bosque County.
B. W. GRAY, delegate from Red River and Titus Counties.
A. BLEDSOE, delegate from Dallas County.
M. KENDALL, delegate from Harrison County.
S. CURTIS, delegate from Brazos County.
F. A. VAUGHAN, delegate from Gaudalupe County.
G. T. RUBY, delegate from Galveston County.
E. DEGENER, delegate from Bexar County.
W. M. VARNELL, delegate from Victoria County.
RALF LONG, delegate from Limestone County.
JACOB KUECHLER, delegate from Gillespie and other Counties.
A. T. MONROE, delegate from Houston County.
J. W. FLANAGAN, delegate from Rusk County.
N. C. BOARD, delegate from Harrison County.
L. P. HARRIS, delegate from Upshur County.
A. BUFFINGTON, delegate from Grimes County.
P. P. ADAMS, delegate from Henderson and Anderson Counties.

A. P. Jordon, delegate from Goliad County.
M. C. Hamilton, delegate from Bastrop County.
James P. Butler, delegate from Walker County.
George H. Slaughter, delegate from Smith County.
G. W. Whitmore, delegate from Smith County.
S. Mullins, delegate from Falls County.
John H. Lippard, delegate from Freestone County.
Wm. Johnson, delegate from Harrison County.
W. G. Horne, delegate from Fort Bend County.
Wm. R. Fayle, delegate from Harris County.
J. W. McWashington, delegate from Montgomery County.
H. C. Hunt, delegate from Comal and Hays Counties.
C. W. Bryant, delegate from Harris County.
J. R. Scott, delegate from Lavaca County.
James Brown, delegate from Kaufman County.
Webster Flanagan, delegate from Rusk County.
J. A. Wilson, delegate from Milam County.
Nathan Patten, delegate from McLellan County.
James R. Burnett, delegate from Houston County.
Wm. S. Philips, delegate from Wharton County.
Robt. K. Smith, delegate from Galveston and Harris Counties.
C. Duval Harn, delegate from Grimes County.
L. D. Evans, delegate from Titus County.
W. Frank Carter, delegate from Parker County.

An Aternative.

But if in any event Congress may deem it improper to permit at present, the organization of State governments in any of the three proposed sub-divisions, then the undersigned request, in the name of the Constitutional Convention and people of the State, that the same be sub-divided and the different sections placed under separate teritorial or military governments, until such time as, in the opinion of Congress, there may be security for life, property and freedom of speech within each of them. The operation of the clause in the constitution in relation to the franchise, inserted therein by cunning, with scarcely a quorum of the Convention present, will turn over the political power of the vast State of Texas into the hands of those who will hereafter misuse that power to the danger of the public safety.

All of which is respectfully submitted.

E. J. DAVIS,
J. W. FLANAGAN,
M. C. HAMILTON,
W. M. VARNELL,
J. R. BURNETT,
Commissioners from the State of Texas.

APPENDIX.

The following objections to the new proposed Constitution was read and spread upon the minutes of the Convention:

HALL OF THE CONVENTION,
AUSTIN, *February* 4, 1869.

Hon. E. J. DAVIS, *President of the Convention:*

SIR: We, the undersigned delegates to the Constitutional Convention of the State of Texas, do hereby express our disapproval of the proposed constitution, adopted by a majority of this Convention.

We object to it, because it is based upon the unwarranted assumption that the Constitution of the United States, with the treaties and laws made in pursuance thereof, and the accepted constitution of the State of Texas, (of 1845,) have not been continuously the supreme law of the land. Believing, as we do, that all pretended laws and judicial decisions, made within the nation's limits, and not authorized by, and subordinate to, the government of the United States, were from the beginning, and must remain, null and void; and the undersigned will never compromise this principle for any supposed policy.

We do most earnestly and solemnly protest against that provision in the proposed constitution which extends the right of suffrage to all those who voluntarily became the public enemy of the United States, feeling assured that it was the aim of Congress to enable the loyal people of Texas, without regard to any distinction of race or color, to reorganize and maintain government in the place of that overthrown by the rebellion. And we cannot forbear to express the conviction that the adoption, by the majority of the Convention, of the provisions in regard to suffrage, was obtained by virtue of a premeditated and deliberate deception, and by methods of intimidation, which deserve the gravest censure.

The majority of the Convention have deliberately removed from the constitution every safeguard for the protection of the loyal voters, white and black. They have stricken from that instrument the whole system of registry. They have repudiated the oath of loyalty contained in the reconstruction laws. They have spurned the test of equal civil and political rights. And we do most solemnly call upon the registered voters of Texas to vindicate the national honor, and the cause of right and of justice, by their votes.

[Signed by] M. C. HAMILTON, *of Bastrop Co.*
JAMES P. BUTLER, *of Walker Co.*
and 18 others.

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